

RESOURCE CONSENTS HEARINGS PANEL

MINUTES: of a meeting of the Resource Consents Hearings Panel which commenced at 9.06 a.m. in the Council Chamber, Centreway Road, Orewa on Friday, 12 February 2010.

PRESENT:

Chair	Alan Watson
Crs	Grahame Powell
	Wayne Walker

IN ATTENDANCE:

Reporting Planner	Justin Walters
Team Leader	Steve Seager
Democracy Services Officer	Raewyn Morrison

* * * * *

Note: Alan Watson replaced John Childs as Chairperson on the Hearings Panel.

12 February 2010

077/02/10 APOLOGIES**AGENDA ITEM NO. 1**

There were no apologies.

078/02/10 A LIMITED NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991 FOR CONSENT TO REMOVE A NORFOLK ISLAND PINE AT 4/9A MELANDRA ROAD, MANLY AS A RESTRICTED DISCRETIONARY ACTIVITY

Address: 4 / 9A Melandra Road, Manly

APPLICANTS: SARAH AND REID QUINLAN**FILE REF** L55625**WARD** Hibiscus Coast

The applicant seeks consent to remove a Norfolk Island Pine tree located near the north eastern boundary of 4 / 9A Melandra Road, Manly.

The applicant, Reid Quinlan, present.

Submitters, Liz and Danny Morris, present.

9.06 a.m. The Chairperson, Alan Watson, opened the hearing and outlined the meeting procedure.

Reid Quinlan gave verbal evidence.

Mr Quinlan said that the tree affected his family's enjoyment of living on the site and it impacted on views directly out to the point of Tindalls Bay, which was something he personally enjoyed looking at. He said that the site was surrounded by trees and although he thought that aspect was important he believed the Norfolk Island Pine was an inappropriate tree where it was planted. Mr Quinlan said that the tree lowered the natural level of light into his house and it dropped leaves and seeds all over the place. The tree had the same effect on the neighbouring Bretherton property. The tree cast a shadow most of morning on their site and then the shadow effects moved to the neighbouring Bretherton property in the afternoon. Since he had bought his property about 5 years ago the tree had thickened up. Mr Quinlan said that the lower branches had obstructed the pedestrian right of way so he had trimmed them back. He also noted that the lower branches had obstructed the Morris' parking and they too had trimmed branches. Before the tree was trimmed he couldn't see through to the Morris' car park so privacy had been lost. He had provided some screening between his property and the Morris' property with the erection of a fence. He would like to replace the Norfolk Island Pine with a more appropriate native tree which would give the benefit of screening. Mr Quinlan said that the Norfolk Island Pine tree was detrimental to the views of houses above his, and most of the neighbours supported the removal. There was a strong feeling in the community that Norfolk Island Pine trees were inappropriate. He noted that the only opposition had come from Mr and Mrs Morris. Mr Quinlan believed removal of the tree would be of significant benefit to himself and his neighbours. He discovered the tree was on his property during a recent survey; he had previously understood the tree belonged to Mr and Mrs Morris. Mr Quinlan said that he did not like the tree.

In response to questions from the Panel, Mr Quinlan said:

- His neighbour, Ms Bretherton, didn't like the tree and had asked for its removal.
- He estimated the height of the tree to be about 12-15m.
- There was a major drain a couple of metres away; this stormwater culvert served 10-12 houses.
- Branches of the tree hung over his property, and the Bretherton and Morris properties.
- It would be to his benefit to plant a tree to replace the Norfolk Island Pine. He would be prepared to plant a couple of natives to fill the gap and he would like to plant well established trees.

12 February 2010

- The reserve at the front of his property provided a setting of native planting.
- If he had known sooner that the tree was his he would have applied for its removal earlier.
- The distance between the Norfolk Island Pine tree on his property and the Norfolk Island Pine tree on the Morris' property was about 3m. He would prefer to have something along the interface of his property and the Morris' property for privacy.
- If essential he would engage professional advice, but he thought advice from the planner and a garden centre person would be sufficient.

Submitters:

Danny and Liz Morris gave a verbal submission.

Mr Morris said that they had bought their house about 16 - 17 years ago and it had been very private and surrounded by large trees. There had been about 25 trees surrounding the property and now only 4 were left, 3 of which were on their property. He thought the Norfolk Island Pine which was the subject of the application for removal was higher than 15m and possibly 80 years old. Mr Morris said the driveway had once been tree-lined but those trees had disappeared about 8 years ago. Mr Morris believed that the previous owner of Mr Quinlan's property had illegally cut down trees on the property. Mr Morris said that he swept up the debris from the trees and cleaned his gutters. He was of the opinion that if people didn't like trees they shouldn't move to places that had them. He didn't see why a perfectly healthy tree should be cut down; it was a large established tree and one of the few left in the area. Mr Morris said that he didn't blame people wanting a sea view, but he felt like he was being "demonised". He also considered that he would have lost about 30% of his original sea view because of the growth of Council trees on the reserve.

Mr Morris said that if the tree was removed the other Norfolk Island Pine on his property would grow and spread. With regard to a replacement tree or trees, he believed that anything more than 2-3m would impede Mr Quinlan's sea view.

Mrs Morris noted that there were nesting birds in the tree. She said that when the survey to check property boundaries had been done Mr and Mrs Quinlan had not asked their permission; she found it quite intimidating that someone had been on their property and she believed she and her husband should have been entitled to a courtesy call. Mrs Morris was of the opinion that their property had been severely devalued over the years with the removal of trees because other people wanted a sea view. Mrs Morris said that they had tried to be neighbourly and had allowed Mr Quinlan's builder/landscaper to gain access from their property to do landscape work.

Council Officer:

Justin Walters

Mr Walters said that he stood by his recommendation that the tree be removed subject to conditions, including replanting. Mr Walters noted an error in proposed condition 3 and requested that the words *within Council Reserve* be deleted. He said that the mitigation planting should be on the applicant's site rather than providing the option of planting on the reserve; the intention in his recommendation was that the applicant would replant another tree in the same place which would provide screening and protection for 9C Melandra Road.

Mr Walters said that the key points were:

- The issue of the neighbour's amenity and that of the applicant.
- The tree was in good health but not of such high ecological importance as that given to native trees in the surrounding area.
- The tree was in early maturity.

12 February 2010

Mr Walters said that the application had been lodged prior to the changes announced to the Act in October 2009 and, in line with the *John Woolley Trust v Auckland City Council, A049/07* decision of the Environment Court, Part II matters could be taken into account if consent was granted; they could not be taken into account if consent was refused. Other changes in the legislation which come into effect from 1 January 2012 will allow for trees that are not scheduled in district plans for protection to be removed as of right. Mr Walters said that he would prefer to see consent granted now when the Panel could impose conditions for appropriate mitigation to at least partially remedy some of the concerns of 9C Melandra Road. After 2012, if the tree was not scheduled, there would be no ability to impose mitigation measures. He said that under the present rules up to 20% of the live growth of the tree could be pruned as of right. Mr Walter said that he thought a condition requiring a planting plan might give more certainty as well as having an additional assessment that appropriate screening be provided to ensure privacy.

Mr Quinlan presented the right of reply

Mr Quinlan said that the area was a medium density zone and highly modified. He noted that there was a huge belt of Pohutukawa trees along the reserve. Mr Quinlan said that he wanted to maximise the use of his small property. With regard to the issue of privacy, he said that Mr and Mrs Morris had cut back the lower branches of the tree so their privacy reasons didn't seem valid to him. He would envisage as mitigation a tree or trees growing not much higher than 4m; he did not want to have his view interrupted.

Mrs Morris requested that if the Norfolk Island Pine tree was to be taken down that it was done on the Quinlan property, not on theirs.

10.21 a.m. The Chairperson adjourned the hearing.

12.00 p.m. The Chairperson closed the hearing at the conclusion of the site visit and deliberations.

The Panel subsequently resolved:

Watson/Walker

THE DECISION:

That pursuant to Sections 104 and 104C of the Resource Management Act 1991, the limited notified application for resource consent by Sarah and Reid Quinlan for a restricted discretionary activity to remove a Norfolk Pine tree at 4/9A Melandra Road, Manly, being Flat 4 DP 166069 CT 100D/65, is granted consent for the following reasons and subject to the conditions below.

REASONS FOR THE DECISION:

That pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows and as described in greater detail in the below "Main Findings of Fact":

1. The effects of the proposal are considered to be of a no more than minor nature. The subject tree is one of a number of trees in the locality and it is not a tree of any significant botanical or ecological significance. In this context the tree would not be missed following its removal. The tree does have nuisance elements, some of which are not too different than the presence of any tree within a neighbourhood, but the applicant/landowner does seek its removal. In addition to the nuisance elements, an improvement to the view from the applicant's property is a reasonable consideration in this case.
2. The submitters raised concerns regarding the privacy impact upon them from the removal of the tree. The Hearings Panel did not find that to be overly significant insofar as this concern is in relation to the car parking area on the submitters' property. That impact can be mitigated with replacement planting which is required as a condition of consent.

12 February 2010

3. The proposal is consistent with the relevant provisions, including, in particular, the assessment criteria of the District Plan that apply to the zone and to proposals for tree removal. The effects of the removal of the tree will not significantly impact upon the surrounding environment in terms of natural character, water quality, site stability or cultural heritage.
4. The proposal does not conflict with any provisions in the regional planning documents.
5. The proposal is consistent with the purpose and principles of the Resource Management Act, at Part 2 of it. The adverse effects of this proposal can be avoided, remedied or mitigated and there will be positive benefits for the occupants of the subject site and for some other neighbours.

**THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (AA))**

This application was considered to be a **restricted discretionary** activity and was considered in terms of Sections 104 and 104C and Part 2 of the Act.

**OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (ab))**

The provisions of the following documents were considered by the Panel in reaching this decision.

Auckland Regional Policy Statement

Chapter 2, Regional Overview and Strategic Direction and Plan Change 6.

Proposed District Plan 2000 – Operative in Part

Residential Eastern Peninsula zone objectives and policies and rules as they relate to the proposal, at Chapter 8.

Urban Land Modification and Vegetation provisions, at Chapter 18.

PREAMBLE:

The Proposal

The proposal is to remove the existing Norfolk Pine tree from the lower end (north east) side of the application site.

Why Resource Consent is Required

Resource consent is required because under Part 18.9.1.2 and the activity table at Part 18.9.3 of the District Plan 2000 - Operative in Part, the cutting, damaging or removal of any exotic tree over 6 metres in height and not listed in the exemptions is a restricted discretionary activity. The tree is approximately 12m in height.

Notification and Submissions

The application was limited notified on 20 November 2009 and submissions closed on 11 January 2010. Two submissions were received from the owners/occupiers of the adjacent property at 9C Melandra Road that both opposed the application. They raised the following concerns:

- The tree is perfectly healthy;
- The tree was firmly established prior to the applicant moving into the house and has not significantly changed in size or shape since then;
- The issue is not about shading or debris, it is about the applicant obtaining a sea view;
- The removal of the tree will impact on the privacy of their property at 9C.

12 February 2010

Written Consents

The applicant has supplied the following owners' approvals:

- S E Bretherton – 9B Melandra Road
- Nicholas and Rebecca George – 6/9A Melandra Road
- Ray and Lloyd Houghton – 5/9A Melandra Road
- John Skeen – 3/9A Melandra Road
- Rodger Spearman – 5/3 Swann Beach Road
- Alan Watkins – 15B Melandra Road.

Under Section 104 (3) of the Act the consent authority, in this case the Panel, must not have regard to any effect on a person who has given written approval to the application.

THE PRINCIPAL ISSUES THAT WERE IN CONTENTION: (Section 113(1) (ac))

The principal issues that were in contention were:

- (1) Whether the proposal to remove the tree will result in adverse effects within the neighbourhood.
- (2) Whether the proposal satisfies the relevant assessment criteria in the District Plan. Those include criteria relating to safety, alternative mechanisms, the significance of the tree, alternative siting and alternative planting (all discussed below).
- (3) Whether the proposal is consistent with the relevant objectives and policies of the District Plan.
- (4) Whether the Section 104 provisions of the Act have been satisfactorily addressed, those including any actual or potential effects on the environment of allowing the activity and any relevant provisions of the District Plan.
- (5) Whether the proposal is in accord with the Regional Policy Statement.
- (6) Whether the proposal is consistent with Part 2 of the Act.

SUMMARY OF THE EVIDENCE HEARD: (Section 113(1) (ad))

The below is a brief summary of the evidence which is otherwise recorded in minutes of the hearing. Further, the main points of the evidence that have been determinative of the decision are outlined in the "Main Findings of Fact" below.

Applicant

Reid Quinlan addressed the reasons why they wished to remove the tree, with those reasons including:

- It affects the enjoyment of their property.
- It limits their views.
- There is otherwise a Council reserve in proximity that is well vegetated.
- It is inappropriate in its current location.
- It obstructs light and creates shadow and creates leaf debris.
- It affects other neighbouring property owners.

Mr Reid accepted that the removal of some lower limbs from the tree had had some effect on the privacy of the Morris property but he was happy to provide screening by way of replacement planting. He pointed out that most of the immediate neighbours were in support of the application and only one in opposition to it.

12 February 2010

Submitters

Liz and Danny Morris explained the reasons for their opposition, in addition to their written submissions, with those concerns including:

- Since 1994 the number of trees in the neighbourhood had reduced from 25 to 4 trees, with three of the remaining trees on their property.
- Their privacy and seclusion had been eroded with the removal of trees to date. The removal of the subject tree would further affect their privacy and seclusion.
- It is a perfectly healthy large and established tree.
- The tree was on the property before the applicant purchased it.
- There is another similarly sized Norfolk Pine on their property, situated close to the tree sought to be removed, that will continue to grow. They expect pressure to be brought upon them for its future removal.

Council Officers

Justin Walters had reported on the application. In his report he covered all relevant matters and recommended consent be granted subject to conditions. At the hearing he confirmed that remained his recommendation to the Panel, subject to replacement planting on the site that would provide some privacy benefits to the Morris property.

Mr Walters summarised his position by stating that the tree was large, in good health and there was no arboricultural reason to remove it, but it was not a tree of high ecological importance and not significant in the local environment. He referred to recent legislative changes in the Resource Management (Simplifying and Streamlining) Amendment Act 2009 by which the general tree protection measures, that were currently providing some protection to the subject tree, would be limited from 1 January 2012. That means it would be unlikely that the tree could be removed unless it was specifically scheduled by the Council for retention before that time. The inference from Mr Walters was that the tree was not significant enough to be scheduled in that manner.

Right of Reply

Mr Quinlan reiterated some of the reasons for wanting to remove the tree. He stated it was part of a highly modified environment to which the medium intensity Residential zone of the District Plan applies and removal of such a tree was not inconsistent with providing for development in that zone.

THE MAIN FINDINGS OF FACT: (Section 113(1) (ae))

The main findings of fact determined by the Panel that have led to the above decision and the reasons for that decision are as follows. They have been reached after considering the application, visiting the site, the evidence at the hearing, the report prepared by the reporting planner, all the relevant statutory and planning provisions, as well as the principal issues that were in contention. The Panel finds that:

Effects

The Panel members have given careful consideration to the actual and potential adverse effects that may accrue from the removal of the Norfolk Pine tree. They heard the views of the applicant and the submitters, and the views of the reporting planner, and had the opportunity to visit the site and locality as part of reaching their decision. The Panel has come to the view that the removal of the tree is acceptable and that the adverse effects upon the local environment, including individual properties and the neighbourhood, would be of a minor nature.

The Panel finds that the subject tree is one of a number of trees in the locality and further, that it is not a tree of any significant botanical or ecological significance. In this context the tree would not be missed following its removal. The tree does have nuisance elements, some of which are not too different than the presence of any tree within a neighbourhood, but the applicant/landowner does seek its removal. The Panel accepts that in addition to the nuisance elements, an improvement to the view from the applicant's property is a reasonable consideration. In another context, and with another tree, that may well not be the view of the Panel.

12 February 2010

The submitters raised concerns regarding the privacy impact upon them from the removal of the tree. The Panel did not find that to be overly significant insofar as this concern is in relation to the car parking area on the submitters' property. However that impact can be mitigated with replacement planting which is required as a condition of consent.

Permitted Baseline

The Panel has had regard to the "permitted baseline" approach to assessing adverse effects. That is whereby a consent authority may disregard an adverse effect if the District Plan permits an activity with that effect. In this case the permitted baseline for comparison is the removal, as a permitted activity, of an exotic tree to a height of 6m. The Panel has not relied on the permitted baseline approach in concluding that the adverse effects from the removal of the tree are of a minor nature.

District Plan Assessment Criteria

The District Plan has a number of assessment criteria to have regard to when considering an application for the removal of the subject tree. The Panel addresses those in the following comments.

The condition of the tree is not such that it will endanger life or property on the site and this was confirmed in the report from the Council's consultant arborist. There are therefore no alternative remedial mechanisms to consider in the context of the condition of the tree. The Panel finds the removal of the tree will not adversely impact on the amenity and landscape values of the neighbourhood given the large number of trees in the locality and it not being considered to have high landscape, amenity or ecological value. The removal of the tree will not initiate or exacerbate erosion, instability or flooding and will not result in the loss of significant wildlife habitat. The loss of this one tree in the context of the other trees and reserve area about it will not impact upon wildlife habitat. There is no development or earthworks associated with the tree removal. The applicant has proposed alternative planting by way of mitigation which is accepted and incorporated into the conditions of consent.

In the circumstances, the Panel finds that the proposal meets the assessment criteria of the District Plan to provide for its removal as sought in the application.

Mitigation

The Panel is of the view, as recommended by the reporting planner, that a replacement tree or trees should be planted following the removal of the Norfolk Pine tree. This will assist to address the privacy concerns of the submitters and will also be some contribution to the vegetation in this locality. The Panel considers a native tree(s) is appropriate, such as Titoki, which could be maintained at a height of less than 6m to assist with the applicant's concerns for views and, if two were planted they could be pruned to form a more "solid" shape to assist with the privacy concern. A condition is imposed on the consent accordingly. The applicant will need to obtain some guidance from a tree specialist; that could be from one of the local garden centre outlets, and the condition included as part of the consent requires the proposed planting to be to the satisfaction of the Council's officers with expertise in such matters.

District Plan Objectives and Policies

The Panel finds that the proposal is consistent with relevant objectives and policies at Chapter 18 (Urban Land Modification and Vegetation Protection) and for the Residential Eastern Peninsula zoning of the District Plan. This is because the effects of the removal of the tree will not significantly impact upon the surrounding environment in terms of natural character, water quality, site stability or cultural heritage and its removal better provides for the amenity of the residents of the site, and neighbours.

12 February 2010

Regional Planning

The proposal is not inconsistent with the Regional Policy Statement and other regional planning initiatives because it seeks to provide for the residential amenity of the applicant and his family.

Section 104 of the RMA

The provisions of Section 104 are satisfied by the proposal in terms of the considerations of effects on the environment and the provisions of relevant planning documents.

Part 2 RMA

This is a proposal which can be considered to be consistent with the sustainable management purpose of the RMA and with the principles of that Act. Whilst the natural resource of the tree would be lost, the proposal has due regard to the physical resources of the applicant's dwelling in a way which will enable that landowner to provide for their social wellbeing and for their health and safety whilst sustaining the potential of the physical resource of that land to meet the reasonably foreseeable needs of future generations. The proposal will not alter in any significant manner the life-supporting capacity of air, water, soil and ecosystems. Any adverse effects on the environment are able to be avoided or suitably mitigated.

There are no matters of national importance associated with the proposal and no specific considerations in relation to Maori. The proposal will result in an efficient use and development of the natural resource of the site and of the physical resource of the building upon it and maintain, and enhance with additional planting, the amenity values and the quality of the environment.

Changes to Legislation

The reporting planner advised, in his report, that the Resource Management (Simplifying and Streamlining) Amendment Act 2009 contains provisions limiting the future force of general tree protection measures in district plans from 1 January 2012. The Panel notes that it would not be correct to give such legislative changes full effect at this time, either by giving considerable weight to them or, alternatively, advising the applicant to wait until 1 January 2012 when it is likely that the tree would be able to be removed. The Panel is of the view that this Norfolk Pine tree would be unlikely to be specifically scheduled in the District Plan in the identification of important trees throughout the district that the Council will need to carry out before 1 January 2012.

LAPSING OF CONSENT:

Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will expire 5 years after the date of commencement of consent unless, before the consent lapses;

- (a) the consent is given effect to; or
- (b) an application is made to the Council to extend the period of consent, and the Council decides to grant an extension after taking into account the statutory considerations, set out in Section 125(1)(b) of the Resource Management Act 1991.

CONDITIONS OF CONSENT:

Pursuant to Section 108 of the Resource Management Act 1991, this consent is subject to the following conditions:

1. (general) The tree removal shall proceed in general accordance with the application submitted. The consent holder shall have particular regard to the adjacent property at 9C Melandra Road and make best endeavours to avoid any interference with it.
2. (notification of commencement) At least 7 days prior to the work, being the tree removal, commencing the resource consent holder shall notify the Council's RMA Compliance Administrator by telephone (0800 426 5169) the expected date of work commencing.

12 February 2010

3. (replacement tree or trees) Within the next planting season (May to October) immediately following the removal of the tree from the site the consent holder shall plant one native tree, and preferably two native trees of the same type, on that part of the site where the Norfolk Pine tree has been removed. A Titoki would be an appropriate type of tree. The tree(s) shall be a minimum size of PB95 or of a height of no less than 1.8 metres. In preparation for the replacement planting the stump and roots of the Norfolk Pine tree shall be removed by grinding or similar. The consent holder shall advise the Council's Manager: Resource Consents, prior to removal of the Norfolk Pine tree, in writing of the type of tree(s) intended to be planted and the location. Those details shall be to the satisfaction of the Council's Manager: Resource Consents, who shall receive advice from the Council's Arborist or other Council officers as appropriate. The replacement tree(s) shall be retained thereafter. (See also the associated advice note below).

ADVICE NOTE:

The consent holder is advised that a Titoki tree(s) has been nominated in the condition above because they are evergreen, tidy, tolerant to coastal conditions, capable of being pruned and can be obtained in a larger size for planting. It is acknowledged that the consent holder may receive advice that another type is equally appropriate and the condition for a replacement tree(s) allows the consent holder to decide on the type of tree(s), but with that decision being checked by the Council's specialists.

Carried

The meeting closed at 12 noon.

CONFIRMED AS A TRUE AND CORRECT RECORD THIS 4TH DAY OF MARCH 2010MAYOR

* * * * *

